14-1942

The Northwest Enterprise
Seattle, Washington

Constitution Clashes With Southern 'Slaveholders' Law'

Supreme Court Emancipates Peons

JAN 16 1942

WASHINGTON—The Supreme Court held unconstitutional today a 1903 Georgia statute challenged by the Justice Department on the ground that it produced "peonage."

Justice Byrnes wrote the 8 to 0 decision. Justice Roberts did not participate.

The legislation made anyone a "comomn cheat and swindler," subject to punishment, who contracted to perform personal services with the intent of obtaining money in advance and then not carrying out the agreement.

Under the law, it also was specified that proof of the contract, the procuring of the money, and failure to perform the service or to return the money with interest "without good and sufficient cause" constituted "presumptive evidence" of the intent.

The decision was on an appeal by Ira Taylor, a Negro. who was convicted in the Wilkinson County Superior Court of violating the statute. He was sentenced to pay a fine of $35 and costs or "do work in a public work camp for a period of eight months."

JAN 16 1942

Conviction Reported

Justice Byrnes said that the sections of the Georgia code under which the defendent was convicted were "repugnant to the 13th Ammendment" to the federal Constitution, which prohibits slavery or involuntary servitude except as punishment for crime. He added that "the conviction must therefore be reversed."

Byrnes asserted that the ffect of the Georgia legislation is to authorize the jury to convict upon proof that an agreement has been reached, that money has been advanced on the strength of it, that the money has not been returned, that the appellant has failed or refused to perform the services 'without good and sufficient cause' and nothing more." He continued:

"The necessary consequence is that one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged.

"Such coerced labor is peonage.

"And it is no less so because a presumed initial fraud rather than a subsequent breach of the employment contract is the asserted target of the statute. It is of course clear that peonage is a form of involuntary servitude within the meaning of the 13th Amendment and that the (federal) Act of 1867 is an 'appropriate' implementation of that amendment."

Taylor was charged with having contracted to work for R. L. Hardie at $1.25 a day in building a house and to have obtained an advance of $19.50 and then failed to carry out the agreement.

'Friend of Court'

"Filing a brief as 'friend of the cuort," the Justice Department said the Georgia statute "hinders the enforcement in that state of federal criminal statutes safeguarding civil rights secured by the Constitution and laws of the United States."

JAN 16 1942

"Recent federal investigations in Georgia," the Justice Department said, "have disclosed that the involuntary service of debtors has been coerced in whole or in part by the threat of prosecution under the state statute.

"In the face of colorable legality under the state law of such enforced labor in liquidation of debts, it is impossible as a practical matter to obtain indictments and convictions and the result has been that the federal statues have been rendered nugaory."

JAN 16 1942

The federal statutes named prohibited "the holding or returning of any person to a condition of peonage," the "carrying away of any person to be held as a slave," and conspiracies, "to injure or oppress any citizen in the exercise of rights or privileges secured by the Constitution."

Journal and Guide
Norfolk, Virginia

Await Decision Of Supreme Court On Tips Of Red Caps

JAN 31 1942

WASHINGTON, D. C. — (ANP) — The U. S. Supreme Court is expected to soon decide the question Are redcaps' tip wages? The case reached the highest court from the U. S. District Court in Jacksonville, through the U. S. Circuit Court of Appeals.

Consensus of opinion of those who listened was that redcaps will win, despite the sad presentation of their case to the court by the American Federation of Labor lawyer, who opened the proceedings.

AFL took the case to the court at Jacksonville when the Jacksonville Terminal Company counted redcaps' tips wages in paying the 25 cents an hour minimum rate prescribed by congress in the Fair Labor Standards law of 1938.

AFL lost appeal to the Circuit Court of appeals and losing again, finally got before the Supreme Court.

AFL "Clerks" International Union represents redcaps on the Baltimore and Ohio Railroad at Dallas, Tex., Jacksonville, St. Louis, Kansas City and Minneapolis.

Great majority, however, are members of the United Transport Service Employees of America, for merly the International Brotherhood of Redcaps, whose somewhat similar suits against railroad companies have not yet reached appellate court jurisdiction.

Journal and Guide
Norfolk, Virginia

Sharecropper's Murder Case To Go To U. S. Supreme Court

FEB 21 1942

FEB 21 1942

NEW YORK—(ANP)—Attorney John F. Finerty, of the Workers Defense League announced here Monday that an appeal to the United States Supreme Court in the case of Odell Waller, Gretna, Va., sharecropper sentenced to be executed March 20 for the slaying of his white landlord, Oscar Davis, would be made. The appeal is to be made on the strength that the barring of non-payers of poll taxes from jury service in Virginia made Waller's indictment and conviction unconstitutional under federal and state laws.

FEB 21 1942

PETITION DENIED

The Supreme Court of Appeals of Virginia denied the petition of the sharecropper for a writ of habeas corpus, in a decision without an opinion. The petition, according to Atty. Finerty, was based on sworn statements showing that non-payers of poll taxes are systematically barred from grand and petit jury service in Pittsylvania County, Va., and probably throughout the state, and were so barred in Waller's case.

FEB 21 1942

It also stated that Waller himself was unable to pay poll taxes. In seeking to get justice, Waller will exercise his rights to ask for a writ of certiorari from the Federal Supreme Court to review the denial of habeas corpus, for which no grounds were stated by the Supreme Court of Virginia. In the meantime, a further stay of execution is to be sought from newly elected governor, Colgate W. Darden.

According to testimony given at Waller's trial, the defendant shot his farmer landlord in self defense in dispute over crop shares. The poll tax issue was raised when he was tried by a jury composed exclusively of payers of Virginia's $1.50 cumulative poll tax.

Chairman of the board of Workers Defense League, Prof. Carl Raushenbush of New York University, declared that a favorable decision of the United States Supreme Court might "weaken the entire poll tax system" and would at least move toward "a democratic jury system in the south."

Globe and Independent
Nashville, Tenn.

TAKE MURDER CASE OF SHARECROPPER TO SUPREME COURT

FEB 20 1942

Attorney for Walker Will Raise Issue of Poll Tax Of Virginia

NEW YORK, Feb. 12 (ANP)—Atty. John F. Finerty, of the Workers Defense league announced here Monday that an appeal to the United States Supreme court in the case of Odell Waller, Gretna, Va., sharecropper sentenced to be executed March 20, for the slaying of his white landlord, Oscar Davis, would be made. The appeal is to be made on the strength that the barring of non-payers of poll taxes from jury service in Virginia made Waller's indictment and conviction unconstitutional under federal and state laws.

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Afro-American
Baltimore, Maryland

The Supreme Court Opens Another Door

MAR 16 1942

The United States Supreme Court ruled last week that the Federal government has the right to regulate primary as well as general elections of Congressmen.

Twenty years ago this same court decided just to the contrary and in its opinion held that the regulation of primary elections was the sole business of the States.

Last week's decision was a double-barreled affair. The high court voted unanimously that it has the right to regulate primary elections. Secondly, by a split vote, 4 to 3, it decreed that U.S. courts have the right to punish crimes committed in a primary election.

Justices Stone, Roberts, Reed and Frankfurter voted in favor. Justices Black, Murphy and Douglas voted dissent.

Perhaps it was too much to expect Mr. Justice Black, a former Klansman, to approve a decision that will for the first time give millions of colored people a vote in Congressional primary elections that heretofore have been lily-white.

The Case

MAR 16 1942

Strangely enough, this case, which is of such importance to us, actually involved no racial issue. Five white men, commissioners of election, were indicted by a New Orleans Federal grand jury for stealing 97 ballots from two candidates in a Congressional primary and marking them for a third candidate.

The whole matter was as simple as that. The charge against the five men was conspiracy to oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and Sections 19 and 20 of the U.S. Criminal Code.

The Louisiana District Court, citing former decisions of the Supreme Court, held itself without jurisdiction. The government appealed to the Supreme Court which, by its ruling last week, orders the lower court to try the case.

11,000 Words

Mr. Justice Stone, in writing the majority opinion, used 7,293 words. Mr. Justice Douglas, in writing the minority opinion, used 4,290 words.

Since all seven jurists agreed that Congress can regulate primary Congressional elections and disagreed only on the question of whether existing Federal laws are sufficient to punish offenders, the spotlight naturally turns to Sections 19 and 20 of the U.S. Criminal Code which the majority held covered this case.

Section 19

Section 19 of the U.S. Criminal Code is as follows:

If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway or on the premises of another with intent to prevent or hinder his free exercise of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible for any office or place of honor, profit or trust created by the Constitution or the laws of the United States.

The Supreme Court majority admitted that Section 19 spoke neither of elections nor primaries. But its plain language protects "any right or privilige secured by the Constitution," including the right of a citizen to have his vote counted in both general and primary elections.

MAR 16 1942

Section 20

Section 20 of the code is as follows:

Whoever under color of any law, statute, ordinance, regulation or custom wilfully subjects, or causes to be subjected, any inhabitant of any State, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such an inhabitant's being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

The court ruled that Section 19 condemns as a criminal offense any conspiracy on the part of individuals to injure a citizen in any constitutional right or privilege, and Section 20 makes it a penal offense for those who do so when acting under the authority of any State or city law, custom or usage.

Originally in Civil Rights Law

Both of these sections were designed originally to protect colored people from racial discrimination. In fact, Section 20 was, as Mr. Justice Stone pointed out, the second paragraph of the Civil Rights Act of 1866 enacted for the protection of newly emancipated slaves.

It is significant to note that U.S. criminal laws, once intended for protection of colored people, should furnish the means by which the arm of the Federal government is extended to protect white people too in their constitutional rights.

MAR 16 1942

Heart of the Matter

The real purpose of this editorial, however, is not to express an approval of the action of the Supreme Court in ending the lily-white primary system of the South. That is important.

Equally as important, we think, is the high court's discussion of Sections 19 and 20 of the Criminal Code and its declaration that they give the U.S. courts the authority to prosecute criminally individuals or officials who injure, oppress, or threaten **any** citizen in the enjoyment of any privilege or right secured him by the Constitution.

For instance, the Fourteenth Amendment to the U.S. Constitution forbids any State laws abridging the privileges or immunities of citizens.

This is a plain prohibition upon laws providing for separation of races in street cars, buses, planes, lavatories, washrooms and waiting rooms.

No State law, such as Virginia's, which forbids colored and whites to sit together in a public gathering, is legally enforceable.

Laws forbidding intermarriage of the races are not legally enforceable.

And the Supreme Court says that persons or officials who enforce these laws may be prosecuted criminally in U.S. courts under Sections 19 and 20 of the U.S. Criminal Code.

All the jim crow and segregation laws of the South can be attacked in the Federal courts under this ruling, and time may well prove that this decision shall be the entering wedge by means of which "colored" and "white" signs in the South are to be hauled down.

What the N.A.A.C.P. Can Do

Now that the New Deal Supreme Court has manifested its willingness to reverse decisions made in the court's reactionary days, our job is to keep it supplied with cases upon which to act.

For the next few years, the N.A.A.C.P. could, with profit, suspend all its other functions and specialize in legal assaults upon jim crow statutes. Nothing else it does may be one-half as important.

Age-Herald
Birmingham, Ala.

Mr. Justice Black

APR 5 - 1942

To innocent bystanders watching the Washington parade, there has been no more interesting development over the last few years than the rise of Justice Hugo Black in public estimation.

APR 3 - 1942

The Alabamian accepted appointment to the Supreme Court bench in a storm of criticism. He was lampooned as a provincial politician, a police court lawyer. His earlier membership in the Ku Klux Klan was made the foundation for a national campaign of propaganda purportedly against him, but in reality the instrument of Roosevelt haters seeking to discredit the president.

But as the years have passed and Justice Black has done more than his mathematical share of the work of the court, writing decision after decision in matters of grave social and economic import, his stature has grown.

In the light of the bitter tirades of a few years ago, this statement from David Lawrence's column in The New York Sun is of interest: "Justice Black has just written on behalf of the Supreme Court an opinion which for fairness and judicial reasoning will compare favorably with any that have been rendered in recent years." In conclusion, after discussing the case at issue—that of the Bethlehem shipbuilding contract with the government—Mr. Lawrence said: "Mr. Black's views deserve commendation for their fairness all the more because this correspondent and others have for the last few years attacked him as being without judicial mind. The latest decision nullifies that accusation."

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We have been reading Mr. Black's opinions with interest and enjoyment in contrast with the mental anguish produced by the general run of court decisions. His judgments have seemed to us to be right, though our endorsement is without weight or importance, since we are not learned in the precedents of legalistic fuddle-duddle and the metaphysics of casuistry. What has won our approval may have been Mr. Black's persuasiveness. He is able to think in the English language and lay down the law in words comprehensible by human beings. The qualities are rare. In our time only Mr. Brandeis and Mr. Holmes had seemed able to do that before our young Southerner joined the Supreme bench.—Atlanta Journal.

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14-1942

The Daily Worker
New York, N. Y.

High Court Reverses Negro's Death Order

JUN 2 - 1942

(Special to the Daily Worker)

WASHINGTON, June 1.—In a unanimous decision the United States Supreme Court today reversed a death sentense upon a Texas Negro on an alleged rape charge, on the ground that Negroes were excluded from the grand jury which indicted him.

The case was that of Henry Allen Hill of Dallas, Tex., who appealed after his conviction was sustained in the Texas Court of Chiminal Appeals.

Chief Justice Stone who delivered the opinion, held that Hill had made out a "prima facie case of the discriminatory exclusion of Negroes from the Grand Jury."

"A prisoner whose conviction is reversed by this court," the opinion said, "need not go free if he is in fact guilty, for Texas may indict and try him again by the procedure which conforms to constitutional requirements.

"But no State is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the Constitution and an act of Congress passed pursuant to the Constitution, alike forbid. . .

JUN 2 - 1942

"Equal protection of the laws is something more than an abstract right. It is a command which the State must respect, the benefits of which every person may demand. Not the least merit of our constitutional ssytem is that its safeguards extend to all—the least deserving as well as the most virtuous."

Chicago Tribune
Chicago, Illinois

HIGH COURT SEES DISCRIMINATION IN NEGRO'S CASE

JUN - 1942

Voids Death Penalty in Unanimous Vote.

Washington, D. C., June 1 (AP).—The Supreme Court of the United States today reversed a death sentence for rape given Henry Allen Hill, Negro, Dallas, Tex., on the ground that he had been unconstitutionally discriminated against because members of his race had been excluded from the grand jury which indicted him.

Chief Justice Harlan F. Stone delivered the unanimous opinion holding that the Negro had "made out a prima facie case of the discriminatory exclusion of Negroes from the grand jury." The opinion added:

"A prisoner whose conviction is reversed by this court need not go free if he is in fact guilty, for Texas may indict and try him again by the procedure which conforms to constitutional requirements.

Cite Act of Congress.

"But no state is at liberty to impose upon one charged with crime a discrimination in its trial procedure which the Constitution and an act of congress passed pursuant to the Constitution, alike forbid.

"Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all—the least deserving as well as the most virtuous."

The Texas court of criminal appeals held, in sustaining the conviction, that no discrimination had been shown against Negroes in selecting the jury.

JUN 2 - 1942

Point to Poll Taxes.

The Dallas county assessor was quoted as having testified that 58,000 white persons and 8,000 Negroes paid poll taxes in the county.

The state court added in its opinion that the grand jury had been empaneled while Hill still was serving a penitentiary sentence and approximately 60 days before the alleged offense was committed.

The alleged crime took place Nov. 30, 1940, while the woman was riding in an automobile with John S. Sanders. The Negro was accused of jumping on the runningboard when the car slowed at an underpass, knocking Sanders unconscious with a rock, and raping the woman before other motorists arrived.

Advertiser
Montgomery, Ala.

Intervenes

JUSTICE HUGO BLACK

Negro Felon's Death Blocked By Hugo Black

JUN 5 - 1942

Justice Stays Execution After Plea's Denial By U. S. Supreme Court

Frank Johnson, Jefferson County negro, did not die in the electric chair at Kilby Prison as scheduled early today for the assault of a white woman, due to action of Justice Hugo Black of the United States Supreme Court in Washington.

The Supreme Court, on Monday had denied Johnson's petition for a review of his case, and had officially notified Alabama authorities of its decision. Preparation was being made here to carry out the execution this morning, shortly after midnight, when Gov. Dixon early Thursday afternoon received a telegram from the clerk of the Supreme Court notifying him that Justice Black had granted a stay of execution until June 9.

The Second Time

This marks the second time in approximately a year that the United States Supreme Court has first denied petition for writ of certiorari seeking a review in cases of Alabamians sentenced to death, and then, through action of an individual justice of the court, has granted the defendant stay of execution.

The other case was that of Joe Vernon, negro, also of Jefferson County, sentenced to the chair for murder. After the Supreme Court had denied his petition for writ of certiorari, the customary procedure whereby it passes upon decision of State courts in such cases, Justice Frankfurther individually granted a stay. Notice of his action did not reach authorities here until a few hours before the time set for the prisoner to die. The Supreme Court reopened the case, and reversed and remanded it for a new trial, which is now pending.

Case History

JUN 5 1942

In the Frank Johnson case, the defendant was convicted of criminal assault upon a young Bessemer wife and mother, committed in her home after she had retired for the night with her husband and baby, the husband being a witness, covered with a gun by the assailant. Johnson was sentenced to death, the Alabama Supreme Court affirmed the sentence, Gov. Dixon denied an appeal for executive clemency, and Johnson then appealed to the United States Supreme Court. Pending decision by that body, his execution was stayed until Friday, June 5.

On Monday, June 1, Atty. Gen. Lawson received the following telegram from Charles Elmore Cropley, clerk of the Supreme Court:

"HONORABLE THOMAS S. LAWSON

"ATTORNEY GENERAL OF ALABAMA. PETITION FOR CERTIORARI JOHNSON CASE DENIED TODAY.

CHARLES ELMORE CROPLEY, CLERK."

JUN 5 1942

This telegram was confirmed by letter to Atty. Gen. Lawson from the clerk of the Supreme Court, dated June 2:

Hon. Thomas Seay Lawson,
Montgomery, Alabama.
Dear Sir:

I write to advise you that in the case of Frank Johnson v. State of Alabama, No. 1241, October Term, 1941, the Court on Monday, June 1, ordered—

The motion for leave to proceed further herein in forma pauperis is denied for the reason that the Court, upon examination of the papers herein submitted, finds no ground upon which a writ of certiorari should be issued. The petition for writ of certiorari is therefore also denied.

Yours truly,
CHARLES ELMORE CROPLEY, Clerk
By (S) H. B. Willey,
Deputy.

JUN 5 - 1942

Thursday, Gov. Dixon received the following telegram, which also went to Atty. Gen. Lawson:

FRANK DIXON, GOVERNOR,
STATE CAPITOL,
MONTGOMERY, ALA.

JUSTICE BLACK HAS TODAY STAYED EXECUTION OF FRANK JOHNSON ALIAS BRADLEY JOHNSON UNTIL JUNE NINTH. TELEGRAPH COLLECT IMMEDIATELY RECEIPT THIS ADVICE.

JUN 5 - 1942

CHARLES ELMORE CROPLEY, CLERK.

Newsweek
Dayton, Ohio

Court of Dissent

'F.D.R.'s Rubber-Stamp' Bench Has Many Minds of Its Own

JUN 15 1942

The 65,000 sightseers who have watched the Supreme Court in action during the term just ended Monday have been impressed most by the comparative youthfulness and vigor of the nine robed justices. For the first time in decades, if not history, no bearded face appears when the great red curtains part at high noon. An unusual amount of chatter takes place between justices, many of whom were intimates in the inner New Deal circle before joining the highest tribunal. To many, the court's transition is most clearly brought home by the fact that Justice Hugo L. Black, the first of the Roosevelt crop of seven, who is just rounding out his fifth year, sits next to Chief Justice Harlan Fiske Stone as third-ranking member. One visitor suggested that the court, changed from "the nine old men" days, is now more like the quiz kids.

JUN 15 1942

To veteran lawyers the court is an enigma. They fail to find in its recent work the rubber-stamp forecast over which the famous reorganization bill was defeated in 1937. High government attorneys who must weigh precisely every syllable of the justices' utterances answer with an ironic

smile suggestions that Mr. Roosevelt now has his court. If it is one man's court, they ask, why so many dissents? (see table on page 30.) Why did the Roosevelt appointees show such a tendency to disagree, even on Administration-sponsored ideas?

JUN 15 1942

Under Chief Justice Hughes, there used to be ten to twenty dissents a year. In the term just ended, although the court was unanimous in 84 cases out of 153 in which written opinions were entered, there were 52 dissenting opinions, of which fourteen involved 5 to 4 votes. Inclusive of written dissents there were 152 minority votes—not a record-breaking number, but indicative of how a new majority inherently divides.

There is not one cleavage in the court, but several—depending on the issue involved. For example, the law of property divides the court one way; the Interstate Commerce clause cuts across a different line; States' Rights finds a third division; and Civil Liberties drive a wedge at still another angle. In the latter field, and some others, it is increasingly noted that Justices Douglas, Murphy, and Black dissent together, usually complaining that their colleagues don't go far enough in protecting fundamental rights and freedoms. In twelve cases the minority consisted solely of this trio.

Observers see at least two definite trends, surprisingly in opposite directions: one expanding the power of the Federal government through the Interstate Commerce clause, and the other expanding the powers of the state governments. The court upheld the right of the Federal government to regulate service employes of a loft building and intrastate milk when it competes with interstate milk. At the same time it upheld the right of Texas to regulate picketing in spite of an apparent curb on free speech, approved an Alabama sales tax on lumber for a Federal construction project, and allowed Oklahoma to stop liquor for inspection at the state line.

In the regular grist of cases, administrative agencies generally were upheld. Wire-tapping was allowed in special instances, and red caps' tips were ruled to be a part of their wages, rather than gifts on the side. California's ban on Okies was knocked out and several persons sentenced to die were given new leases on life when the court found duress, lack of counsel, or exclusion of Negroes from the jury. Of particular controversy was the decision that the Federal Anti-Racketeering Act does not reach a union which demanded that trucks coming into New York either be unloaded by a union man or an equivalent amount be paid in cash, as long as the unionist was willing to do the work he demanded.

JUN 15 1942

This week the court wound up its work true to form, with two 5 to 4 splits. For the court, Justice Byrnes declined to invoke the Wage-Hour Act to upset an employer-employe arrangement for calculating overtime payments. Justice Reed wrote a dissent in which the Black-Douglas-Murphy trio joined. Then, in a similar case, Reed wrote the majority, with Stone concurring separately and Roberts dissenting.

Next, in three cases decided together upholding conviction of Jehovah's Witnesses for peddling without licenses, Reed voiced the majority opinion, while a bloc that has appeared often in cases involving freedom of religion and speech—the Chief Justice, Black, Douglas, and Murphy—joined in two written dissents.

NEWSWEEK's box score on the Supreme court:

JUN 15 1942

Justice	Wrote Majority Opinion	Concurred Separately	Wrote Dissenting Opinion	Voted in Minority*
Stone	22	6	5	19
Roberts	15	1	5	19
Black	16	4	11	21
Reed	12	1	7	14
Frankfurter	20	6	7	13
Douglas	26	5	8	27
Murphy	15	3	4	19
Byrnes	16	1	0	10
Jackson	11	7	5	10
Total	153	34	52	152

*Includes third column.

Age-Herald
Birmingham, Ala.

With The Minority

The deep complexity of many problems having to do with constitutional American freedoms in time of war is well illustrated by a 5-to-4 division of the Supreme Court of the United States this week.

JUN 11 1942

The decision involved the question of the right of three cities, one of them Opelika, Ala., to impose license fees in connection with the distribution of religious literature by members of Jehovah's Witnesses.

The majority of the court, composed of Justice Reed, who wrote the opinion, and Justices Frankfurter, Roberts, Jackson and Byrnes, upheld the right of legislative bodies to impose such a license. It was maintained that "when proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing."

As against this, Chief Justice Stone and Justice Murphy, both of whom wrote dissenting opinions, in which Justices Black and Douglas concurred, maintained that such a procedure would open the way to invasion of religious freedom. Justice Stone said that such city taxes are better adapted to suppression of speech, religion and press than were "the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth century newspapers and pamphleteers, and which were a moving cause of the American Revolution."

Justice Murphy wrote that "liberty of conscience is too full of meaning for the individuals in this nation to permit taxation to prohibit or substantially impair the spread of religious ideas, even though they are controversial and run counter to the established notions of a community."

* * *

We do not have immediately available the full texts of majority and minority opinions. But one point of great pertinance, it seems to us, is whether these license imposts were motivated merely as a means of regulating and taxing an activity, in the way a regular commercial activity would be regulated or taxed, or whether the motivation was to curb the dissemination of the minority viewpoints involved.

JUN 11 1942

To us it would seem implied by the majority opinion of Justice Reed that the latter motivation may be properly involved in such licenses for it holds that "courts are competent to adjudge the acts men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion, and to determine whether the claimed right is limited by other recognized powers, equally precious to mankind." The hearing of one man's views, the opinion went on, "may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

More specifically to the point, it seems to us, is the explicit question whether such imposts can be used to suppress the dissemination of minority views in wartime or crisis. Was that the basic aim of these levies? If so, what are constitutional rights in this respect?

* * *

It seems to us that the answer to such a question necessarily becomes very much a matter of judicial interpretation of specific cases in particular circumstances. No generalized rule could be effectively laid down which would set forth exactly what could be done and said, or not done and said, in every conceivable set of circumstances.

To be sure, the interest of the nation must be safeguarded. At the same time, it is the genius of our constitution and our way of life that the state is not held to be all-powerful, that there are certain areas of freedom for the individual which are inviolate.

[redacted] 1 1942

Defining these areas precisely is often a very difficult task. In these particular cases we quite definitely go along with the minority. We do not think that the danger presented to the general interest in these instances, even in this time of war, was great, if, indeed, there was any considerable danger at all. Furthermore, we think that the effect of holding that such a practice may be properly limited in the general interest presents a formidable danger that the constitutional rights of conscience and expression might, under such a precedent, be whittled down to forbid whatever was regarded by various officials as in conflict with the general interest.

As Justice Black said in a supplementary comment on the case in behalf of himself and Justices Douglas and Murphy, "the opinion of the court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group."

* * *

This holding by the court may not seem widely important to many persons as applied to a small minority sect, but if the same principle were made operative on a wider scale, it might be the means of a broad and tragic suppression of freedom.

The problem is, indeed, one of balancing rights and dangers. We repeat that we do not see any sufficient danger in the practices over which licensing regulation is established to justify what seems the much greater danger in opening the way to this kind of regulation.

In our selective service law we have recognized again the right of freedom of conscience, even to the point of conscientious objection. This ruling seems to us to present a danger even to the conscientious dissemination of minority views.

We stand with Justice Murphy in his declaration that "if this court is to err in evaluating claims that freedom of speech, freedom of the press and freedom of religion have been invaded, far better that it err in being over-protective of these precious rights."

14-1942

Argus

St. Louis, Missouri

R. R. MUST PAY NEGRO $3.000 WHO WAS BEATEN ON MISSOURI PACIFIC TRAIN

DEC 18 1942

St. Louis.—On December 24, 1941, Mack White, colored, age 66, took a Missouri-Pacific train out of St. Louis for Memphis, Tenn., using a ticket that his son had previously sent him. When the train reached Noble, Ark., a new conductor took charge of it. When the conductor asked White for his ticket, he was not able to find it immediately, and the conductor became impatient, and said, "I haven't time to fool with you all night, I'll put you off of here."

Beaten by Officers

When the train reached Paragould, Ark., the conductor stopped the train, went out in the City and looked for police officers, brought them into the train, and told them to arrest White. Without further ceremonies, the officers pounced upon White, kicked and beat him, and took him off the train.

White brought a suit against the Missouri-Pacific for damages, and was represented by Attorney Silas E. Garner, 11 N. Jefferson, Peoples Finance Bldg. The case went to trial, Dec. 7, 1942 in Div. 18, presided over by Judge F. E. Williams. The case was submitted to the jury Wednesday morning about 11 o'clock. It reutrned with a verdict for plaintiff in forty-five minutes, awarding him $1,000 actual damages and $2,000 punitive.

Kansas City Call

Kansas City, Mo.

Supreme Court Returns Mortgage Suit to District

DEC 25 1942

Aetna Concern Seeking to Foreclose On Estate of Strangers' Rest Church

DEC 25 1942

KANSAS CITY, Kas.—(Special)—When the Kansas Supreme court last week affirmed the overruling of the defendant's demurrer in the case of the Aetna Federal Savings and Loan association versus Strangers' Rest Baptist church, the suit began a return trip to the Wyandotte County district court where it will be continued from the point where it was stopped in the summer of 1941.

The Aetna Federal Savings and Loan Association, formerly the Aetna Building and Loan association, is seeking to foreclose the mortgage on Strangers' Rest Baptist church, 5th St. and Stewart Ave.

DEC 2

Case Was Begun in '41

The case was begun January 30, 1941, in the Wyandotte County district court, when the company filed a petition to foreclose the mortgage on the church. The plaintiff alleges that on Feb. 6, 1926, Strangers' Rest made a promissory note for the sum of $10,000, due and payable with interest in monthly installments. The church property was bought by the Strangers' Rest congregation from the Quayle Memorial Methodist church in 1925.

The company continued in the petition that the individuals mentioned in the suit—48 of them—and the trustees agreed that in case of default of payments or interests or dues at stated times the note became due and payable and should after default bear 10 per cent interest.

Payments, according to the petition, were not made on March 1, 1939, and had been ever after in default. The balance due on the mortgage by Dec. 21, 1940, the petition continued, was $10,004.38.

The defendant in the case included the trustees of the church—H. C. Scott, N. L. Alexander, Charlie Tucker, Roy Fuget, R. D. Meeks, H. C. Campbell, Emanuel McCaskill, M. C. Watson, William Williams, Elijah Jones, John Jones, and John Barksdale, unknown trustees of the church, individuals believed to be a part of the membership roll, Board of Home Missions of the M. E. Church, Corporation and Strangers' Rest, which was described as "an unincorporated, voluntary religious society".

On April 19, 1941, the defendants filed a separate demurrer alleging that the plaintiff did not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant. The demurrer was overruled by Judge Russell C. Hardy of division 4 of the district court.

Notice of Appeal

On June 17, 1941, a notice of an appeal made to the state supreme court was filed in the office of the clerk of the district court. The results of this action came about a year and a half later when the higher court Saturday affirmed the decision of the district court.

In one of its documents the defense alleged that Charles Tucker and R. D. Meeks were the only ones in the list of trustees named by the plaintiff who were trustees. The others were either dead or not members.

Neither Rev. Washington, according to a statement signed by him in the records, nor his predecessor, the Rev. Moses Williams, never signed the note and mortgage mentioned in the plaintiff's petition.

Attorneys for the plaintiff are William H. McCamish, Kansas City, Kas., and Mark L. Bennett of Topeka. William H. Towers has been handling the suit for the defendant.

The Rev. C. A. Washington is pastor of Strangers' Rest.

14-1942
Age-Herald
Birmingham, Ala.

Six Supreme Justices And A Farmhand

(Editorial In The St. Louis Post-Dispatch)

Is the United States Supreme Court today—after the appointment of seven associate justices by Franklin D. Roosevelt—less solicitous of the rights of indigent citizens than it was a decade ago when conservatives such as Justices Sutherland and Van Devanter were writing majority opinions?

Let the reader consider the following facts and decide for himself:

In 1932, while Herbert Hoover was still in the White House, the Supreme Court, in a seven-to-two decision, reversed the convictions in the case of seven Negro youths, commonly known as "the Scottsboro boys." The basis for the reversal was that counsel for the defendants had been provided so casually that the friendless Negroes could not have had a fair trial.

Justice Sutherland, who wrote the majority opinion, gave a classic statement of the basis for the right to counsel:

> What does a (criminal) hearing include? Historically and in practice, it has always included the right to the aid of counsel when desired. Even the intelligent and educated layman lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel in every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he does not know how to establish his innocence.

For this fundamental reason, Justice Sutherland concluded: "The United States by statute and every state in the Union by express provision of law, or by the determination of its courts, make it the duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him. In most states the rule applies broadly to all criminal prosecutions, in others it is limited to the more serious crimes, and in a very limited number to capital cases. A rule adopted with such unanimous accord reflects, if it does not establish, the inherent right to have counsel appointed."

* * *

That was the Supreme Court of 1932 in the case of Powell vs. Alabama. Now take a look at the Supreme Court of 1942 in the case of Betts vs. Brady.

Smith Betts is a white Maryland farmhand out of a job and on relief. He is indicted for robbery in the Circuit Court of Carroll County. He is too poor to hire a lawyer. He so informs the trial judge and asks that counsel be appointed to defend him. He is told that this would not be done, as it was not the practice in the county to appoint counsel for indigent defendants except in murder or rape cases.

Without waiving his asserted right to counsel, Smith Betts pleads not guilty and stands trial before the judge. He attempts to cross-examine the state's witnesses and he asks questions of his own witnesses, whose testimony is to the effect that he was not at the scene of the robbery. It is clear, from his examination of witnesses, says the record of the case at one point, that he is "a man of little education." He is found guilty and sentenced to eight years' imprisonment. After he is committed to the Maryland penitentiary, he files a petition for a writ of habeas corpus on the ground that he was deprived of a constitution right. When he exhausts the facilities in Maryland, he appeals to the Supreme Court of the United States.

Does the Supreme Court reaffirm Justice Sutherland in the Scottsboro case? Not at all. In an astounding six-to-three decision, it actually declares that "appointment of counsel is not a fundamental right, essential to a fair trial."

These amazing words are from the majority opinion of Justice Roberts. But that is not the worst of it. Even though he contends that counsel is not essential to a fair trial, Justice Roberts does go on to admit that "want of counsel in a particular case may result in a conviction lacking in fundamental fairness."

The conviction may be lacking "in fundamental fairness," yet jobless farmhand Smith Betts, man of "little education," has had an adequate trial and must stay in the Maryland penitentiary on an eight-year sentence!

* * *

There were three judges who could not stomach any such decision, and they hit the majority ruling in a dissent which should have shamed the six for their disregard of a fundamental American right. Said Justice Black, speaking as well for Justices Douglas and Murphy:

> If this case had come to us from a Federal Court, it is clear that we would have to reverse it, because the sixth amendment makes the right to counsel in criminal cases inviolable by the federal government. I believe that the 14th amendment made the sixth applicable to the states.
>
> Most of the states have shown their agreement (with the right to counsel) by constitutional provisions, statutes or established practice judicially approved which assure that no man shall be deprived of counsel merely because of his poverty. Any other practice seems to me to defeat the promise of our democratic society to provide equal justice under the law.

But the Roberts opinion not only reverses Powell vs. Alabama. It repudiates State Supreme Court decisions which have been law for almost a century. Contrast it, for example, with these ringing words from the Indiana Supreme Court in 1854:

> It is not to be thought of, in a civilized community, for a moment that any citizen put in jeopardy of life or liberty shall be debarred of counsel because he was too poor to employ such aid. No court could be respected, or respect itself, to sit and hear such a trial. The defense of the poor in such cases is a duty resting somewhere which will be at once conceded as essential to the accused, to the court and to the public.

If the Supreme Court has not now said that there can be one kind of justice for the defendant who has the money to employ a lawyer and another kind for an indigent farmhand such as Smith Betts, it has come so close to it that there is no essential difference.

This undemocratic, unjust ruling cannot stand. That it should be handed down at a time like this, when we seek to hold up to the world the ideal of justice for all under law, is a shocking thing.

For the sake of the reputation of the Supreme Court, to say nothing of the rights of penniless defendants, we may hope that this same issue will arise in the next term and that some of the present majority will have the courage to do what Justices Black, Douglas and Murphy did in the religious freedom case—confess openly that they were wrong.

FDR Urged to Put Negro On Bench

P.M.
PM's Bureau

WASHINGTON, Oct. 7.—President Roosevelt was asked yesterday by Edgar G. Brown, director of the National Negro Council, to appoint a Negro to succeed Justice James F. Byrnes on the U. S. Supreme Court.

He suggested the appointment of Federal Judge Herman E. Moore, now serving in the Virgin Islands. Judge Moore is a graduate of Howard University and the Boston Law School. He is a resident of Chicago and formerly served on the Illinois Commerce Commission.

Brown, in a telegram to the President, said the appointment of a Negro would foster national unity among the nation's 13,000,000 Negroes. He added:

"This type of recognition of a distinguished member of the Negro race at this time, in the midst of the world crisis, would inspire new hope and confidence in all the darker races, not only in the Americas, but also in China, India, and Africa."

New Section Is Opened To Race By Decision

Restriction Has Existed For More Than 32 Years

WASHINGTON, D. C. — (ANP) —Reversing the decision of the lower court, the district court of appeals ruled in favor of Frederick and Mary Hundley permitting them the occupancy of the house at 2530 13th street which previously had been denied them on the grounds of an existing covenant which prohibited selling the property to Negroes.

The covenant, drawn up 32 years ago in 1910, was declared a hindrance to the development of the property rather than a help. Conditions in the neighborhood have so changed that should Negroes be excluded the properties would be virtually uninhabited, the appellate court ruled.

Mr. and Mrs. Hundley, both of whom teach in the public school system here, purchased the house through a white agent but when they attempted to occupy the premises they were subjected to ill treatment. When the case was taken to the court, a ruling in favor of the signers of the covenant was rendered. However, with Charles H. Houston representing them, the Hundleys took their case to the court of appeals with the result of a ruling in their favor.

The action opens up the neighborhood for Negroes and it is expected it will become an exclusive residence area thereby.

Chief Justice Lawrence Grener and Justices Fred M. Vinson and Wiley Rutledge rendered the decision.

Daily World
Atlanta, Ga.

Dismisses Case Against Hostile Ohio Company

Irked Jurist Flays Negroes; Executive Order 8802 Hit

DEC 27 19 42

CLEVELAND, Ohio, (ANP) This city is a seething inferno of indignation as a result of the "extra judicial" remarks of Common Pleas Judge Frank J. Merrick who this week dismissed the case of two Negro women who had been denied jobs by defense industries holding government contracts because they are black.

Judge Merrick in an hour long harangue that officially passed as a decision, said that "the Negro, we must remember, is only two generations from the jungles of Africa," and "is not ready to be assimilated into American culture and industry." The jurist continued that "Abraham Lincoln did not make the Negro over in one night when he set them free," and that Negroes must wait until whites are ready to accept them in industry.

CAN'T CHANGE PREJUDICE

Jobs for Negroes cannot be obtained by "force" and "10,000,000 laws cannot change prejudice and the social outlook" of whites toward Negroes, he declared, when passing on the merits and meaning of President Roosevelt's Executive Order 8802 that prescribes discrimination in war industries on a basis of race, color or creed.

Attorneys for the plaintiffs, Misses Claretta Johnson and Effie Lee Turner, announced they would appeal the decision. The lawyers were supplied by the Future Outlook league of which John O. Holly, militant local leader, is president.

Charges were brought by the women after the Johnson and Swasey and Thompson Products companies have refused to give employment to them for which their experience and training qualified them, because as company officials admitted on the stand, 'they are Negroes."

DEC 2 7 194

BEHIND SCHEDULE

Charles L. Stilwell, president of one of the companies, testified under cross-examination by Attorneys Chester K. Gillespie, Clayborne George and Harvey J. Johnson, that his firm was nine months behind in its war production schedule and admitted that it was possible that not hiring Negro workers was a contributing factor. He declared however, that attempts to use Negro help were blocked by strike threats from the AFL machinist union.

This statement was hotly denied by Matthew De Moore, president of the AFL machinist District council who said his union did not bar Negro workers. Future Outlook league lawyers later confused him under relentless questioning and he was forced into an admission that he had lied. He said that the union constitution "left such things up to shop locals."

In an attempt to justify its exclusion of Negro women from skilled jobs, the Thompson Products company pointed out that it did hire some Negro men, but it was disclosed by attorneys for the plaintiffs that they were all employed in menial capacities such as sweeping floors and manual labor.

NULLIFIES ORDER

Judge Merrick's decision in effect upholds the right of industries to bar workers on a basis of race despite the necessity of cooperating with War Production board appeals to speed up production to help supply ships, lanes, munitons and guns for our fighting army and navy.

All of the companies involved are operating under government contracts and with federal loans for expansion purposes. Acquisition of new lands and erection of new building for operations are in many cases being done with U. S. funds. It was explained by Attorney George that these are taxpayers funds, and since the two women are citizens, they are taxpayers, and therefore have a definite stake in the present boom of war plants.

Commenting on the appeal the lawyer said the concerns involved agreed not to discriminate before they were awarded government contracts, but have violated their sworn statements.

VIOLATE AGREEMENT

"In entering into a free contract with the government in which it was granted the use of taxpayers' money for the purchase of machines, the building of plants, and the acquisition of land, these defendant companies agreed not to discriminate against workers because of color, or race," declared George.

"They have violated this agreement, and we believe that there is remedy in law for our clients and will continue to seek it in a higher court unless these companies make the question a meet one by complying with the terms of their contract with the government," he continued.

"That is," he went on, "by giving every citizen, regardless of race, color or sex, an opportunity to work at the jobs for which he is best fitted by experience or tarining."

The Plaindealer
Kansas City, Kan.

Minister Sues Under New Mitchell Law

Louisville.—The Rev. J. O Clark, well known minister of Jeffersonville, won his first court victory last Thursday in his suit to recover $20,000 damages from the L. & N. railroad for alleged discrimination because of his color in interstate traffic, when Federal Pudge Schakelford Miller overruled the railroad's motion to dismiss the suit.

Because of his church connections, Rev. Clark does a great deal of traveling by rail. The suit centers around his purchase of a first-class ticket from Louisville, for a round trip to Oklahoma City, via St. Louis and the St. Louis and San Francisco railroad.

The latter road, he alleges, refused to serve him either in the dining car, or to serve him meals in the coach. On the return trip, according to his petition, he was forced to leave an air-conditioned first-class coach, for inferior accommodations after leaving Evansville.

DEC 1 8 1942

During the court hearing, Judge Miller said that the minister relies on a recent ruling of the United States Supreme Court, which held that discrimination in accommodations based solely on a passenger's color, violates the Interstate Commerce Commission Act, in that ruling, the Judge said, the Supreme Court held that colored persons holding first class tickets must be afforded accommodations equal to white persons holding similar tickets.

DEC 18 1942

The L. & N. contention, said the judge, is not an answer to the petition. The Supreme Court ruling, he continued, held that the carrier must comply with that law and furnish equal accommodations at the same time. The railroad also contended it was not responsible for the actions of the dining car steward on the other line as in selling the ticket it was acting as agent for the Frisco line.

Judge Miller pointed out that the Supreme Court ruling in such a case may be decisive if the L. & N. shows, as was pointed out in the case cited, that the clause governing the ticket sale and printed on the ticket stating the L. & N. was not responsible beyond its own line. However, for the present, the allegations of the minister's petition will rule, Judge Miller said.

DEC 18 1942

The petition, he pointed out, alleges the Frisco line was acting as agent for the L. & N. Judge Miller suggested that on this issue the summary judgment rule of federal court procedure be used so as to eliminate, if possible, an unecessary trial on this paragraph of the petition.

A jury will have to determine the conflict in the petition and answer regarding the accommodations furnished the minister by the L. & N. the court ruled. On the basis of Thursday's rulings, the case will now go to trial.

Chicago Tribune
Chicago, Illinois

THE REAL FRIENDS OF CIVIL LIBERTY.

Sen. Burton Wheeler, demanding that Atty. Gen. Biddle review the grand jury proceedings by which an indictment was brought in the city of Washington against 28 persons accused of conspiring to injure the morale of the armed forces, aligns himself with those who manifest a serious concern for the preservation of civil rights in wartime. Sen. Taft and Rep. Hoffman have also had the courage to speak their minds about this proceeding, but it is striking that so far the professional organizations and almost all of the individuals who usually set up a clamor when they conceive civil liberties to be threatened have not responded to the issues raised in this case.

DEC 19 1942

Certain reasons for this silence suggest themselves. Some of the better known organizations have in the past displayed a tendency to rush to the defense of the principle of civil liberties only when the particular individuals or groups that might be injured by their abuse happen to share political, social, or economic predilections popular with the champions of the persecuted. The well publicized cases of Angelo Herndon, the Scottsboro defendants, and others providing a serviceable class angle demonstrate that the zeal of the professional exponents of civil rights is most easily aroused when there is a fair possibility of creating convenient political martyrs.

The defendants in the Washington indictment lack this attraction. Most of them are outcasts and crackpots and those of them not previously convicted as seditionists voiced opinions unpopular not only with civil liberties crusaders but with the overwhelming majority of the American people. It is the virtue, however, of such men as Wheeler and Taft that they are able to draw a distinction between specific utterances and the right to utter. That distinction is what makes the Washington proceedings important as they bear on the principle of civil rights.

The senators may despise the defendants as individuals and abhor the opinions they have expressed, but they may still feel that the department of justice has contrived to deprive those facing trial of their rights under the Constitution and before the law. It has been charged that entrapment was employed to bring them hundreds of miles from their homes to stand trial in a hostile jurisdiction, where every venire is dependent directly or indirectly upon the government. One of the grievances of the American colonists was the practice of transporting for trial. The practice is as heinous now as then. The political bias of the administration was further revealed in these proceedings by gratuitously dragging in mention of the America First committee and other organizations whose sin it was to differ with the administration over national policy.

DEC 19 1942

Senators Taft and Wheeler and the others who have had the courage to speak in behalf of the principle of civil liberties, no matter how unpopular the men and women may be who are shielded by their advocacy, have given proof of the constancy of their dedication to the Bill of Rights. It would seem that now, if ever, is the time that they hear from those who have so loudly professed their devotion to civil rights that they have allies in the fight. We have often heard the professional crusaders voice the famous words of Voltaire, "I do not agree with a word that you say, but I will defend to the death your right to say it." Is that just a pat quotation, or does it really mean something to those who repeat it?

14-1942
Washington Tribune
Washington, D. C.

Supreme Court Throws Out Torture Confession

NEW YORK—When the United States Supreme Court reversed the decision of the Texas Court of Circuit Appeals, Monday, JUN 1, 1942 by declaring that the conviction on a murder charge of William Ward of Mt. Pleasant, Tex., was based on a confession forced by protracted questionings and threats, the NAACP won another victory for the guarantee of constitutional rights to Negroes before the highest tribunal in the land.

The case was argued before the Supreme Court by Leon A. Ransom and W. Robert Ming, Jr., members of the NAAP national legal committee, May 4. Justice James F. Byrnes read the decision June 1.

Ward was indicted in September, 1939, for the murder of Levi Brown, white, who was strangled to death. When the body of Brown was discovered Sunday, June 25, Ward was taken to the Titus county court house along with several others for questiining. He had been seen talking with the dead man the day before the body was found. Ward declared he was innocent, but during the questioning he was slapped by a constable named Redfearn.

Because there was no reason for holding him, he was allowed to return home. Questioning of other suspects followed, but no evidence of the guilty person was obtained. Nevertheless, Ward was arrested the following Tuesday night at a church party, without warrant, taken from county to county, lodged in jails for brief periods, all the while being questioned and threatened. Ward tastified that he was beaten, whipped and burned with cigarette butts.

It was not until he had been driven to six different counties under threats and constant surveillance that he made the confession.

The Supreme Court held that the state's contention that he was moved about to protect him from mob violence did not seem valid.

Chicago Bee
Chicago, Illinois

HIGH COURT THROWS OUT 'TORTURE' CASE

NEW YORK, June 11—When the United States Supreme Court reversed the decision of the Texas Court of Circuit Appeals, Monday, June 1, by declaring that the conviction on a murder charge of William Ward of Mount Pleasant, Tex., was based on a confession forced by protracted questioning and threats, the N.A.A.C.P. won another victory for the guarantee of constitutional rights to Negroes before the highest tribunal in the land.

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Accused of Murder

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Afro-American
Baltimore, Maryland

High Court Turns Down Waller Case

NEW YORK—The U.S. Supreme Court for the second time declined without opinion on June 1 to review the case of Odell Waller, Virginia sharecropper sentenced to die on June 19 for shooting his white farmer landlord.

On the same day, the court reversed the conviction of Henry A. Hill of Texas, on a charge of criminal attack, because colored persons were excluded from the grand jury which indicted him. It has been pointed out that this same opinion might have been applied to the Waller case.

Further Appeals Possible

Waller's counsel can still appeal to the Federal District Court of Eastern Virginia for a writ of habeas corpus. If the appeal is rejected, he can apply to the Circuit Court, and if refused there, he can carry the matter once more to the Supreme Court.

This will mean that a further stay of execution will have to be granted, either by Governor Darden or by Chief Justice Harlan Stone, in whose circuit the appeal, the last legal remedy available to Waller, would be made.

If that should fail, his only hope would lie in Governor Darden's power to commute his sentence.

Washington, D. C. Post
July 20, 1942

Justice Sutherland

With the death of George Sutherland, the country has lost the most eloquent and persuasive justice of what is often called the "old court." Through probably the most dramatic and momentous period of the Supreme Court's history, he was the outstanding conservative member of that tribunal. For it was Justice Sutherland who supplied the philosophical background for many of the "old court's" decisions. And when basic constitutional issues were at stake he often became the spokesman for the conservative majority.

After the court attained a liberal majority, the scholarly justice from Utan continued to voice his philosophy of strict constitutional interpretation through dissenting opinions. Today his view has been discarded. The Constitution is no longer regarded as an actual measuring rod of governmental power. Rather it is looked upon as only a general guide to the evolution of our democracy. Time alone will tell whether the dangers Justice Sutherland saw in this trend can be successfully avoided. But his championship of the cause of strict adherence to the letter of the Constitution will not soon be forgotten.

Nothing would do the departed jurist a greater injustice than to suppose that he habitually voted against all New Deal measures that went before the court. In the Chaco arms embargo case he unhesitatingly recognized the broad powers of the President in handling our foreign relations. Likewise he upheld the Administration's viewpoint in the TVA case. In the field of civil liberties, too, he wrote some notable decisions, such as that granting a new trial to the Scottsboro Negroes accused of rape. The line which Justice Sutherland drew was that of constitutional power, as he understood it, from long study of the charter of 1787 and its background.

"The only legitimate inquiry we can make," he was fond of saying, "is whether it is constitutional. If it is not, its virtues, if it have any, cannot save it; if it is, its faults cannot be invoked to accomplish its destruction." Sometimes Justice Sutherland seemed to find restraints in the Constitution that were not actually there, as in his opposition to State minimum wage laws for women. His zeal to prevent the exercise of what he believed to be unconstitutional power led to unwarranted expansion of the "due-process clause," just as the present court has distorted the "commerce clause." Nevertheless his opinions show a deep and fundamental devotion to the principle of constitutional government. In the eagerness of the present era to create new agencies and to extend the scope of governmental powers, that high regard for the basic principle which has guided us through a century and a half of growth is likely to be appraised at less than its actual value. Yet it is so thoroughly ingrained in the history of the United States that the name and work of George Sutherland are not likely to be soon forgotten.

Chicago Defender
Chicago, Illinois

U. S. SUPREME COURT AND DEMOCRATIC JUSTICE

The United States Supreme Court put on a real show recently and broke a 22-year tradition when it interrupted its summer recess and reconvened in extraordinary session to rule on the plea of seven Nazi spy saboteurs who had applied for writs of habeas corpus to release them from trial by a secret military commission appointed by the President.

After deliberating for two days on the merits of the defense plea, the Court, in a per curiam announcement read by Chief Justice Harlan F. Stone, denied the motions for leave to file petitions for writs of habeas corpus.

In asserting its jurisdiction to consider whether military commissions are lawfully appointed, the Court obviously was not only examining the application of the Nazi saboteurs, but also sitting in judgment on the President's authority to appoint such commissions. There were necessarily involved in this case broad implications. For had the petitioners' plea been upheld, the effect would have imperiled the vast powers granted the Chief Executive in times of national crises. The fact that this

high tribunal was willing to hear the case, however the Court decided, was of itself a magnificent demonstration of the high purpose and ideal of our democratic institutions in striking contradistinction to the Fascist ideology that negates individual human rights in order better to deify the state and glorify murderous orgies committed in its name.

We regret the necessity for inquiring at this time into the Court's moral conception of justice vis a vis American citizens. For, when prior to its adjournment the United States Supreme Court refused to hear the petition for a writ of habeas corpus in the Odell Waller case—a Virginia sharecropper who was indicted by a Poll-Tax jury, Negro people took a gloomy view of that action and began to wonder if the Court had entered into a new era of retraction of its liberal attitude.

The Poll-Tax issue was raised because Odell Waller, who shot his farmer-landlord in self-defense in a dispute over crop shares, was tried by a jury composed exclusively of payers of Virginia's cumulative poll tax. The petition for a writ of habeas corpus presented proof that non-payers of poll taxes were systematically barred from voting lists and from grand and petit juries in Pittsylvania county, Virginia, where the trial occurred.

On the morning of July 2, Waller was executed. He thus went to his death without the full protection of the law. But Waller was an American citizen who defended his rights in the manner he thought best. He was not a spy, he was not a saboteur trying to destroy the government and its people. He was a common citizen whose faith in democratic justice gave him courage to defend himself. The Court would not hear his plea. On the other hand the Court took special pain to display its generosity toward seven German spies who landed in this country on a special mission of death and destruction. At least their application for writs of habeas corpus was heard, whereas that of Odell Waller, an American citizen, fell on deaf ears. The contrast is depressing and discouraging.

Daily World
Atlanta, Ga.

Carolinian May Get Judge Parker To Supreme Court Seat

NOV. 22, 1942

WASHINGTON, D. C.—Although President Roosevelt has given no indication of his intention regarding the vacancy on the supreme court bench, there is a strong possibility he will appoint a former nominee, Judge Parker of North Carolina when he decides to fill the vacancy.

Previously, Judge Parker was the target of a successful objection raised by the NAACP and the unions. Since that time, his record is said to be vastly changed and he is highly regarded in judicial circles.

The action of the United States senate is proposing Sen. Barkley follows a precedent set by Mr Roosevelt when he named Sen. James F. Byrnes of South Carolina to the bench.

Prior to the appointment of Byrnes, he told the ANP he was not interested in the post on the bench for he felt he could do more good in his office as a senator. Three weeks later he was on the bench.

Barkley is making similar statements. He is not seeking the job and he wants to stay in the senate where he is the Democratic leader. However, his colleagues presented his name to the President but many of them express regret at so doing following the senator's action last Saturday when he ordered the sergeant at arms of the senate to arrest eight senators, all of them from poll tax states.

The Plaindealer
Kansas City, Kan.

Supreme Court Post

NOV. 27, 1942

WASHINGTON, Nov. 27 (ANP)—Although President Roosevelt has given no indication of his intension regarding the vacancy on the supreme court bench, there is a strong possibility he will appoint a former nominee, Judge Parker of North Carolina when he decides to fill the vacancy.

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NOV 27 1942

Court Denies Negroes Plea In Tennessee

The Sun
Baltimore Md.

NOV 8 1942

Nashville, Nov. 7 (AP)—The State Supreme Court today affirmed a Chancery Court decision denying the petition of six Negro youths for admission to the Graduate School at the University of Tennessee at Knoxville.

The high court, in an opinion by Justice David DeHaven, ruled that "equivalent facilities" had been authorized for the Negroes by an act of the 1941 State Legislature and that a further "decision of the issues" in the case "becomes unnecessary and improper."

NOV 8 1942

The case originated in Knox County Chancery Court in October, 1939, when the appellants petitioned for a court order to force university official to admit them to the institution's graduate schools.

Counsel for the Negroes argued that the courses they sought to study were not available at any State-supported school other than the university and that to bar them from the latter school constituted race discrimination and a violation of their constitutional rights.

Judge Recommends 'Patient Diplomacy' to Woman Who Wants Work

N.Y.

Special Correspondence

CLEVELAND, Dec. 21.—Common Pleas Judge Frank J. Merrick is a man whose heart bleeds for the Negro.

Judge Merrick said so himself as he threw out of court a suit which would have opened the Cleveland war industries to qualified Negro workers had it been successful.

Instead of litigation, Merrick recommended to the Negro plaintiff "patient diplomatic negotiations" because nothing can change the fact that discrimination against Negroes does exist.

Merrick was ruling in the suit of Effie Mae Turner, machinist, who charged she had been refused employment in war industry, despite her qualification for the work at a Government school. Defendant was Warner and Swasey Co., whose head is a former president of the Cleveland Chamber of Commerce.

The Judge said he was not impressed by the possibility that his decision against Negro participation in the war effort would be grist for the Axis propaganda machine.

Evidence at the trial was clear on the point that the defendant employed no Negroes and had no intention of employing any. This despite the fact it holds Government contracts bearing the President's anti-discrimination clause.

Merrick held that the court is powerless to interfere with private enterprise or private contracts."

DEC 21 1942

Negro Loses Suit for Job

Lincoln Prof Wins Property In Jim-Crow Case

DEC. 12, 1942

The Chicago Bee

ST. LOUIS, Dec. 10—(ANP)—Prof. Svocel Richardson of the Lincoln university law school will not be forced to move from his residence in the 4600 block on North Market street. A decision handed down Wednesday by Circuit Judge R. A. Aronson ended attempts of white groups, including the Marcus Avenue Protective association and the St. Louis Real Estate Exchange to bar Negroes from that area.

The suit to oust Atty. Richardson, who is also managing editor of the National Bar Journal, was started in April of 1941. There have been more than half a dozen stench bombings of Negro homes in this neighborhood and potshots have been taken at fleeing vandals by colored homeowners. It is believed the decision handed down by Judge Aronson will end further attempts to force Negroes out of the neighborhood.

Prof. Richardson was assisted in making the searches and preparation of his fight by Atty. Silas E. Garner. The two filed a 33-page highly-documented brief at the injustices of residential segregation and appealing for a fair decision. Aiding them in making the searches and preparation of the brief were Many prominent citizens ap-

Dean William E. Taylor, Attys. James C. Bush, Daniel W. Bowles, Dorothy L. Freeman of the Lincoln law school staff and Mr. Richardson and his family. Three whites also appeared to testify that they are good neighbors, students.